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By: **Delegates Stull, Aumann, Bartlett, Bates, Cane, G. Clagett, V. Clagett, Cluster, Edwards, Elliott, Frush, Glassman, Hogan, Holmes, Jennings, Kelly, Krebs, Malone, McConkey, McKee, Montgomery, Myers, Owings, Parrott, Shank, Sossi, Stocksdale, Weir, ~~and Weldon~~ Weldon, Boutin, McDonough, Kach, Smigiel, Donoghue, and Boteler**

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 26, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Milk Products - Threat to Public Health - Impoundment and Penalties**

3 FOR the purpose of requiring the Secretary of Health and Mental Hygiene to  
4 impound a milk product that the Secretary determines is a certain threat to  
5 public health; authorizing the Secretary to issue certain orders if the Secretary  
6 impounds a certain milk product; authorizing the owner of a milk product that is  
7 disposed of or otherwise made unusable to bring an action for damages against  
8 the Secretary; providing that the Secretary has certain immunity from liability;  
9 requiring an order of the Secretary that imposes a civil monetary penalty to  
10 state certain information; requiring the Secretary to adopt certain regulations;  
11 authorizing a person subject to a civil monetary penalty to appeal the order in a  
12 certain manner; providing that certain provisions of this Act do not apply to a  
13 retail establishment; and generally relating to milk products that are a threat to  
14 public health.

15 BY repealing and reenacting, with amendments,  
16 Article - Health - General  
17 Section 21-428  
18 Annotated Code of Maryland  
19 (2000 Replacement Volume and 2003 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
21 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Health - General**

2 21-428.

3 [(a) The Secretary shall impound a milk product that has been handled  
4 improperly or has not been kept at the required temperature and shall dispose of the  
5 milk product in accordance with the health laws of this State.]

6 (A) (1) THE SECRETARY SHALL IMPOUND A MILK PRODUCT THAT THE  
7 SECRETARY DETERMINES IS A THREAT TO PUBLIC HEALTH.

8 (2) FOR PURPOSES OF THIS SUBSECTION, A THREAT TO PUBLIC HEALTH  
9 EXISTS IF A MILK PRODUCT INTENDED FOR CONSUMPTION:

10 (I) IS HANDLED IMPROPERLY;

11 (II) IS NOT KEPT AT THE REQUIRED TEMPERATURE;

12 (III) IS INJURIOUS TO HEALTH IF CONSUMED; OR

13 (IV) IS OTHERWISE UNSAFE.

14 (B) IF THE SECRETARY IMPOUNDS A MILK PRODUCT UNDER SUBSECTION (A)  
15 OF THIS SECTION, THE SECRETARY MAY ISSUE AN ORDER TO DISPOSE OF THE MILK  
16 PRODUCT, MAKE THE MILK PRODUCT UNUSABLE FOR CONSUMPTION, OR IMPOSE A  
17 CIVIL MONETARY PENALTY IN ACCORDANCE WITH THE HEALTH LAWS AND  
18 REGULATIONS OF THE STATE.

19 (C) (1) THE OWNER OF THE MILK PRODUCT THAT IS DISPOSED OF OR  
20 OTHERWISE MADE UNUSABLE UNDER SUBSECTION (B) OF THIS SECTION MAY BRING  
21 AN ACTION FOR DAMAGES AGAINST THE SECRETARY.

22 (2) THE SECRETARY SHALL HAVE THE IMMUNITY FROM LIABILITY  
23 DESCRIBED IN § 5-633 OF THE COURTS ARTICLE IN ANY ACTION BROUGHT UNDER  
24 THIS SUBSECTION.

25 (D) (1) AN ORDER OF THE SECRETARY THAT IMPOSES A CIVIL MONETARY  
26 PENALTY UNDER SUBSECTION (B) OF THIS SECTION SHALL STATE THE BASIS ON  
27 WHICH THE ORDER IS MADE, THE AMOUNT OF THE PENALTY, AND THE MANNER IN  
28 WHICH THE AMOUNT OF THE PENALTY IS CALCULATED AS SPECIFIED BY  
29 ~~REGULATION~~ REGULATIONS ADOPTED BY THE SECRETARY IN ACCORDANCE WITH  
30 PARAGRAPH (2) OF THIS SUBSECTION.

31 (2) THE REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS  
32 SUBSECTION SHALL PROVIDE FOR HOW THE CIVIL MONEY PENALTY WILL BE  
33 ADJUSTED ACCORDING TO THE VOLUME OF MILK FOUND TO BE UNUSABLE FOR  
34 CONSUMPTION.

35 ~~(2)~~ (3) A PERSON SUBJECT TO A CIVIL MONETARY PENALTY IMPOSED  
36 UNDER SUBSECTION (B) OF THIS SECTION MAY APPEAL THE ORDER THAT IMPOSES

1 THE PENALTY IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE  
2 GOVERNMENT ARTICLE.

3 ~~(E)~~ SUBSECTIONS (A), (B), (C), AND (D) OF THIS SECTION DO NOT APPLY TO A  
4 RETAIL ESTABLISHMENT.

5 [(b)] ~~(E)~~ (F) If a retail establishment repeatedly fails to handle and  
6 maintain milk products properly, the Secretary, after due notice, may order that retail  
7 establishment to stop selling milk products until the establishment shows that it can  
8 and will handle and keep its milk products properly.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 2004.